



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,485	01/22/2001	Beverly Sparks		3256

7590 11/02/2004

Sam Talpalatsky, Esq.
10867 Cloverhurst Way
San Diego, CA 92130

EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT PAPER NUMBER

1744

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/767,485

Applicant(s)

SPARKS, BEVERLY

Examiner

Krisanne Jastrzab (formerly Thornton)

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-11, 13-17, 20-24, 27-31, 34-38 and 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Goglio U.S. patent No. 5,285,954.

Goglio teaches a container useable for transport, storage and sterilization of its contents, the container formed of panels, the top being hingedly attached, and has a laminate covering one of the panels that can withstand sterilizing conditions. The container further has a flap extending from the top panel and covering an exhaust vent therein. See column 1, lines 24-25, column 2, lines 10-24, column 4, lines 23-30, and lines 49-58.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1744

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 7-8, 13-14, 20-21, 27-28, 34-35 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padgett U.S. patent No. 4,644,586.

Padgett clearly teaches a container formed with a series of side panels, one panel covered with a laminate capable of maintaining integrity during a sterilization process, and being sealed such that it forms a selectively openable exhaust vent. Padgett is silent as to one of the panels serving as an entrance to the container, however, a clear discussion is recited regarding the sterilization of bulky items within the box, and thus it is intrinsic to the process that the container have a closeable entrance there to for the introduction and removal of items to be sterilized. See column 4, lines 39-55 and Fig. 7.

Claims 5-6, 12, 18-19, 25-26, 32-33, 39-40 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goglio as applied to claims 1-4, 7-11, 13-17, 20-24, 27-31, 34-38 and 41-44 above, and further in view of either Cote et al., U.S. patent No. 5,913,422 or Stone et al., U.S. patent No. 5,732,821.

It is conventional in the art to provide sterilization containers with racks therein, those racks being perforated to facilitate the flow of sterilant around all sides of an item to be sterilized as is shown in both Cote et al., and Stone et al. It would have been well within the purview of one of ordinary skill in the art to provide such rack means within

Art Unit: 1744

the container of Goglio in order to ensure optimal contact of the sterilant with the article to be sterilized.

Response to Arguments

Applicant's arguments filed 8/13/2004 have been fully considered but they are not persuasive.

Applicant argues that the "lamine diaphragm" of Goglio is detached from the walls and therefor does not constitute a "lamine covering at least one side of one of the panels" as set forth in the claims. The Examiner, however, would disagree and point out that by "covering" is defined as something "over or about" absent any attachment, in Webster's Dictionary, and as such the lamine of Goglio is clearly covering the base panel of the container (see column 4, lines 50-53).

Applicant further argues that Padgett discloses only a single aperture which does not account for an entry point and selectable exhaust point, as now required by the newly amended claims, however, the Examiner would maintain that the selectable exhaust vent 44 of Padgett is clearly taught and though silent as to the description of an entry point, such would be intrinsic to the container of Padgett in order to facilitate the clearly disclosed function, namely sterilization of bulky items, of the container.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1744

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

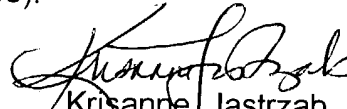
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Krisanne Jastrzab
Primary Examiner
Art Unit 1744

November 1, 2004